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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,063	12/04/2003	Satoshi Tani	FY.50763US0A	7959

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KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER

BASINGER, SHERMAN D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/728,063	TANI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sherman D. Basinger	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 5-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 10 is/are allowed.
- 6) ☒ Claim(s) 5-7, 11, 15-17 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 8 and 12-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 24, 2005 has been entered.

### ***Claim Objections***

2. Claims 10 and 13 are objected to because of the following informalities: in claim 10, lines 14 and 15 "the biasing mechanism operating on the throttle lever" has no clear antecedent; in claim 10, lines 15 and 16 "the biasing mechanism operating on the control lever" has no clear antecedent; and, in claim 13, line 2 "addition" should be -additionally-. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kleeman et al of record.

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Kleeman et al discloses a method of controlling an engine speed of a marine engine that powers a propulsion unit of a watercraft (see column 2, lines 58 and 59), the method comprising selecting between a first predetermined throttle resting position figure 4 and a second predetermined throttle resting position figure 5 depending upon a desired operational mode of the watercraft (trolling or not trolling), the second throttle resting position of figure 5 causing the engine to power the propulsion unit by an amount sufficient to assist steering of the watercraft when decelerating from at least a planing speed, and the step of selecting between the first throttle resting position and the second throttle resting position clearly being independent of a steering condition of the watercraft.

As is shown in figure 6, the selection of the engine speed is controlled manually.

5. Claims 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Irgens. Irgens discloses a watercraft comprising a hull partially shown in figure 1, an engine 13 supported by the hull, the engine comprising a throttle 15, a means 43 for selecting between at least a first and a second predetermined resting position for the throttle, the second resting position shown in figure 3 providing a larger opening degree than the first resting position shown in figure 1, and a throttle actuator mechanism 23 coupled to the throttle to move the throttle from either the first or second resting position toward a

wide open position.

In Irgens the means for selecting is operable to select between the first and second resting positions at least while the engine is acting to propel the watercraft in a forward direction because it is pivoted by pivot 44 to frame 25 such that it can be pivoted from the position shown in figure 1 to the position shown in figure 3 irrespective of whether control lever 23 is in the reverse, neutral or forward positions.

Means 43 is disposed next to at

least a portion of the throttle actuator mechanism 23 as is shown in figures 1 and 3.

Also, means 23 lowers

engine speed during a shifting operation.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 6, 7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsuda et al.

In Matsuda et al the hull is shown in figure 1, the engine is E, the throttle is 51, the jet propulsion unit is P, the steering nozzle is 18, the throttle actuator mechanism is 35, the control lever Lt, the selective first and second positions of the control lever is shown in figures 4B and 4A, the first position of the control lever Lt being arranged such that the throttle actuator mechanism 35 rests in a first position shown in figure 4B and the

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second position of the control lever Lt being arranged such that the throttle actuator mechanism 35 rests in a second position shown in figure 4A, the throttle having a first position when the control lever is in the position shown in figure 4B and a second position when the control lever is in the position shown in figure 4A.

Matsuda et al does not disclose that the control lever is actable to assume either of the first and second positions independently of a steering condition of the watercraft.

Note in Kleeman et al the throttle actuator mechanism 14, the control lever 10, the selective first and second positions of the control lever shown in figures 4 and 5, the first position of the control lever 10 being arranged such that the throttle actuator mechanism 14 rests in a first position shown in figure 4 and the second position of the control lever 10 being arranged such that the throttle actuator mechanism 14 rests in a second position shown in figure 5, the throttle having a first position when the control lever is in the position shown in figure 4 and a second position when the control lever is in the position shown in figure 5. In Kleeman et al the control lever 10 is actuable through head 42, tubular member 30, flexible shaft 60 and knob 66 to assume either of the first and second positions independently of a steering condition of a watercraft.

*It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to replace cables 31a and 31b and the associated hardware of Matsuda with a head similar to 42 of Kleeman et al, a tubular member similar to 30 of Kleeman et al, a flexible shaft similar to 60 of Kleeman*

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*et al and a knob similar to knob 66 of Kleeman et al to actuate the control lever to assume either of the first and second positions independently of a steering condition of the watercraft.*

*Motivation to make such a change is to allow manual positioning of the control lever Lt when it is released at any time, and not just during steering. If one can easily choose the idle speed of the engine through the position of the control lever Lt when it is released, one can make sure that the idle speed provides propulsion thrust sufficient to produce the steering effect one wants when the control lever is released. Or one can easily choose not to have the speed of the engine increase when the control lever is released.*

When the throttle rests in the position shown in figure 4A, the engine sufficiently powers the jet propulsion unit to assist steering of the watercraft when decelerating from at least the planing speed.

The operational control device housing supporting the control lever is 34. Housing 34 is disposed next to at least a portion of the throttle actuator mechanism.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kleeman et al in view of Powers.

Kleeman et al does not disclose that the selection of engine speed is controlled automatically. Powers discloses the use of an electric motor to control the throttle,

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which means that the throttle and therefor the engine speed is controlled automatically through the electric motor. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to control the throttle of Kleeman et al automatically and therefor the engine speed automatically through the use of an electric motor. The electric motor can be used to automatically adjust head 42 of Kleeman et al. Motivation to do so is to not have to adjust head 42 manually. Head 42 can be adjusted with a switch and electric motor as taught by Powers.

***Allowable Subject Matter***

9. Claims 8 and 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 9 and 10 are allowed.

***Response to Arguments***

11. Applicant's arguments filed October 24, 2005 have been fully considered but they are either moot or not persuasive except those pertaining to the rejection of claim 21 under the first paragraph of 35 U.S.C. 112. The rejection of claim 21 under 35 U.S.C. 112, first paragraph, is withdrawn in view of the amendment to claim 21 and in view of the arguments referenced above.

12. Applicant's arguments concerning the rejection of claims 5, 6, 7 and 11 with Matsuda et al are moot in view of the new grounds of rejection of these claims with Matsuda et al modified with Kleeman et al.



13. Applicant arguments concerning the rejection of claims 15 and 16 as being anticipated by Kleeman et al are not persuasive. Applicant amended claim 15 to define a first predetermined throttle resting position and a second predetermined throttle resting position. It is urged that the resting position of the throttle of Kleeman et al for figures 4 and 5 of Kleeman et al are predetermined resting positions. The position of head 42 of Kleeman et al determines the position of the throttle. The position of the head 42 in figures 4 and 5 of Kleeman et al is predetermined. Predetermine means to settle or decide in advance. One has to decide in advance to what position head 42 of Kleeman et al is going to be adjusted-either adjusted to the position of figure 4 or adjusted to the position of figure 5. Applicant makes the same decision with respect to control lever 134 of the instant application. One has to make a decision in advance as to whether to put the control lever 134 into one of its two positions. The same holds true for positioning the head 42 of Kleeman et al.

14. Applicant's arguments concerning the rejection of claims 19-21 with Irgens et al are also not persuasive. Applicant amended claim 19 to define "a means for selecting between at least first and second predetermined resting positions for the throttle". In Irgens this means is lever 43. The two resting positions are shown in figures 3 and 4. Predetermined means settled or decided in advance. One decides in advance which of the two positions lever 43 of Irgens is to be placed. The movement of lever 43 of Irgens from its slow idle to its fast idle is no different than the movement of control lever 134 of applicant from one end of slot 40 to the other end of slot 40, one end of the slot predetermining the position of the throttle in a first resting position and the other end of

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the slot predetermining the position of the throttle in a second resting position.

Likewise, the position of lever 43 of Irgens at its lower position predetermines the position of the throttle in its first resting position and the position of lever 43 of Irgens at its upper position predetermines the second resting position of the throttle.

15. For the above reasons, the rejections stand.

### ***Conclusion***


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 571-272-6679. The examiner can normally be reached on Monday through Friday, 5:30 a.m. to 2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Sherman D. Basinger  
Primary Examiner  
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